

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSEPH MONTALDO,

Plaintiff,

-against-

THE COUNTY OF SUFFOLK,

Defendant.

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LINDSAY, Magistrate Judge:

ORDER

21-CV-1272 (JMA) (ARL)

Before the Court is the renewed motion of Steven J. Moser (“Moser”), counsel for the plaintiff, Joseph Montaldo (“Montaldo”), seeking leave to withdraw as his attorney of record. The motion was served on Montaldo and counsel for the defendant but no one has filed a response to the motion. For the reasons set forth below, the motion is granted.

Rule 1.4 provides that:

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the court and may not withdraw from a case without leave of the court granted by the order. Such an order may be granted only upon a showing by affidavit of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.

See Local Civil Rule 1.4 of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York. The Court must consider two factors when deciding a motion to withdraw (1) “the reasons for withdrawal” and (2) “the impact of the withdrawal on the timing of the proceeding.” *Estate of Larry Shaw & Susan Shaw v. Marcus*, No. 7:14-CV-3849 (NSR), 2016 U.S. Dist. LEXIS 120742, 2016 WL 4679734, at *1 (S.D.N.Y. Sept. 6, 2016) (quoting *Blue Angel Films, Ltd. v. First Look Studios, Inc.*, No. 08-CV-6469 (DAB) (JCF), 2011 U.S. Dist. LEXIS 16674, 2011 WL 672245, at *1 (S.D.N.Y. Feb. 17, 2011)).

Under the Model Code of Professional Responsibility (“Model Code”), “moving to withdraw is mandatory where [, as here,] . . . [t]he lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.” *Koon Chun King Kee Soy & Sauce Factory, Ltd. v. Kun Fung USA Trading Co.*, No. 07 CV 2568 CPS SMG, 2009 WL 605786, at *2 (E.D.N.Y. Mar. 9, 2009) (citing Model Code, § 1.16(a); 22 N.Y.C.R.R. § 1200.15(b)). In addition, the initial conference in this case has not yet been held, and thus, the timing of the withdrawal will not prejudice the parties. Finally, Moser indicated in his prior application that he is not seeking a charging lien. Accordingly, the motion is granted.

Montaldo is granted sixty days from the date of this order to appear *pro se* or through new counsel. Moser is directed to serve a copy of this order on Montaldo and file proof of service with the Court.

Dated: Central Islip, New York
February 25, 2022

SO ORDERED:

/s/
ARLENE ROSARIO LINDSAY
United States Magistrate Judge